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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,312	07/07/2003	W. John Gardener	1442.041	8270
23405	7590	07/11/2007	EXAMINER	
HESLIN ROTHENBERG FARLEY & MESITI PC			LE, HUYEN D	
5 COLUMBIA CIRCLE				
ALBANY, NY 12203			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.	GARDENIER, W. JOHN	
Examiner	Art Unit	
Huyen Le	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 April 2007.
2a) This action is FINAL. 2b) This action is non-final.
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-9,11,23-27,29-39,41,42,55-57 and 59-65 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) Claim(s) _____ is/are allowed.
6) Claim(s) 1-9,11,23-27,29-39,41,42,55-57 and 59-65 is/are rejected.
7) Claim(s) _____ is/are objected to.
8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. _____.
3) Information Disclosure Statement(s) (PTO/SB/08) 5) Notice of Informal Patent Application
Paper No(s)/Mail Date _____. 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1- 8,11, 23-27, 29-38, 42, 56, 57, 59-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friend (3,641,996) in view of Burgess et al (4,211,216).

The Friend reference discloses a system for providing pressurized water to a set of water inlets 60,61 in a bathing enclosure comprising: a foot well position; a least one of a source of pressurized water 21; at least one manifold 22 having at least one inlet in fluid communication with the source of pressurized water 21 and a plurality of outlets in fluid communication with the set of water inlets 60,61; and a user-operable diverter 24a distinct from the manifold 22 configured to divert at least some of the pressurized water away from the water inlets and to the foot well.

Although the Friend reference does not teach a seat at an elevation, attention is directed to the Burgess et al reference which teaches a whirlpool comprising a seat 2 at an elevation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a seat for a user in the Friend hydrotherapy

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system in view of the teaching of the Burgess et al reference for providing more comfort to a user.

Regarding claim 2, the user-operable diverter 24a is positioned upstream of the manifold 52.

Regarding claim 3, the user-operable diverter 24a comprises a variable user-operable diverter.

Regarding claim 4, the set of water inlets 60 comprise a plurality of first water inlets having a first pressure drop to the flow of water therethrough, and wherein the bathing enclosure comprises at least one second water inlet 60 comprising a second pressure drop to the flow of water therethrough, wherein the user-operable diverter diverts at least some of the pressurized water to the at least one second water inlet 60 of the bathing enclosure wherein the second pressure drop is less than the first pressure drop because first water inlets 62 comprises a plurality of openings.

Regarding claims 5 and 31, although the Friend reference does not specifically disclose that the second pressure drop of the second water inlet is at least 50 percent less than the pressure drop across the first set of water inlets, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select pressure drop for the second inlet within a certain range to best fit a particular a water system for a bathing device and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

Regarding claim 6, the system further comprises at least one conduit (an exiting pipe before the T-section connected to valve 24a) between the source of pressurized

water 21 and the manifold inlet 22, wherein the user-operable diverter 24a is in fluid communication with the conduit.

Regarding claim 7, the system further comprises at least one conduit 18 (or a pipe section where valves 63 and 64 are connected thereto) positioned between the manifold outlet 60 and the set of water inlets 62.

Regarding claim 8, the user-operable diverter 24a comprises a valve.

Regarding claim 11, the bathing enclosure comprises a tub.

Regarding claims 23-27, 29-34 and 60, the method for pressurizing water to a set of water inlets in a bathing enclosure would be inherently performed during the installation and normal use of the Friend modified system.

Regarding claim 35, the system includes a one single speed pump.

Regarding claim 36, the variable diverter 24a is a valve.

Regarding claim 40, the bathing enclosure comprises at least one foot well, wherein the user-operable diverter 38 diverts water to the one foot well.

Regarding claim 41, the set of water jets 62 is located in one seat surface 16.

Regarding claim 42, the bathing enclosure comprises a pool.

Regarding claim 55, the surface 16 comprises a plurality of portions joined by a connector therebetween, the plurality of portions 16 constitute a plurality of seats.

Regarding claim 56, the set of water inlets are positioned above the seat elevation (surface portion 16).

Regarding claim 57, the manifold 60 comprises a plenum into which the least one inlet discharges water and from which water is distributed to the plurality of outlets 60.

3. Claims 9 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Friend (3,641,996) in view of Burgess et al (4,211,216) as described above and further in view of Ruderian (3,374,492)

Although the Friend reference shows only one pump, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide more than one pumps in the Friend system in view of the teaching of Ruderian reference to further enhance hydrotherapy effect in the tub.

4. Claims 1-9, 11, 23-27, 29-39, 41, 42, 55-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicollet (3,964, 472) in view of Petersen (3,496,579) or Diamond (D 288,350).

The Nicollet reference discloses a system (Fig. 7) for providing pressurized water to a set of water inlets in a bathing enclosure comprising: at least one seat 3, a foot well; a least one of a source of pressurized water 42; at least one manifold 31 having at least one inlet in fluid communication with the source of pressurized water 21 and a plurality of outlets in fluid communication with the set of water inlets.

Although Nicollet does not disclose the seat being at an elevation above the foot well, attention directed to the Petersen reference which teaches a foot well 24 sunk below a seat 23 or 42 or a seat 23 or 42 at elevation above a foot well 24. In addition,

the Diamond reference teaches a bathtub having a seat at an elevation above the floor of the bathtub

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Nicollet tube to include a foot well at an elevation below the seating area the in view of the teachings of the Petersen or Diamond for providing a user with a seating position so that a user can easily get up from the tub.

Regarding claims 5 and 31, although the Friend reference does not specifically disclose that the second pressure drop of the second water inlet is at least 50 percent less than the pressure drop across the first set of water inlets, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select pressure drop for the second inlet within a certain range to best fit a particular a water system for a bathing device and to optimize the performance. See *In re Aller*, 105 USPQ 233, using the optimum or workable ranges involves only routine skill in the art.

Regarding claims 23-27, 29-34 and 60, the method for pressurizing water to a set of water inlets in a bathing enclosure would be inherently performed during the installation and normal use of the Nicollet modified system.

5. Claims 9 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicollet (3,964,472) in view of Petersen (3,496,579) or Diamond (D 288,350) as described above and further in view of Ruderian (3,374,492)

Although the Nicollet reference shows only one pump, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide

more than one pumps in the Nicollet system in view of the teaching of Ruderian reference to further enhance hydrotherapy effect in the tub.

Response to Arguments

6. Applicant's arguments filed 04/10/2007 have been fully considered but they are not persuasive.

Regarding applicant's arguments that Friend does not include any structure corresponding to a "foot well", as described in the present specification, which is a recessed area positioned to accept feet of the bather, examiner disagrees with the applicant. Applicant has read more structures of a footwell from the specification than what has been actually claimed. Any enclosure, receptacle, sink, tub or basin can be a "foot well". In the case, the bathtub, which is well capable of accepting the feet of a user, is considered as a "foot well".

Regarding applicant's arguments that pipes 18 and 22 of Friend have only single outlet from pipe 18 in fluid communication with the set of water inlets and Friend does not disclose a manifold as disclosed in the present invention, examiner disagrees with applicant. The pipes 18 and 22 of manifold have a plurality of outlets which are branched out at valves 13, 24a and 63-65. Since the structure of the manifold has been specific, the claimed manifold has been meet by Friend's pipes 18 and 22.

Regarding applicant's arguments that there is no suggestion or motivation either reference to combine the tub of Friend with Burgess, examiner disagrees with applicant. The Friend reference does not teach a seat at an elevation. On the other hand, the Burgess et al reference teaches a whirlpool comprising a seat 2 at an elevation for

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accommodating a patient. Therefore, it would have been obvious to one of ordinary skill in the art to modify the Friend hydrotherapy system to include a seat in view of the teaching of Burgess et al for providing more comfort to a patient user. The motivation to combine the references relied on the facts that the two references are in the same bathtub art and the Burgess et al reference teaches a seat in a tub which the Friend reference lacks.

Regarding applicant's argument that the Office fails to identify a user operable diverter as claimed and that the tube of Nicollet is "specially shaped" to element the legs above the seat and so incorporate the foot wells of Peterson or Diamond at an elevation below the seat of Nicollet would contravene the intention of the Nicollet design, examiner disagrees with applicant. Fig. 7 of Nicollet clearly shows a user-operable diverter 22. Adding a foot well of Petersen to an area of the tub of Nicollet where the drain 32 is located and between the lower lip receiving area 2 and the hip receiving area 3 would not contravene the intention of the Nicollet design because the upwardly convex 2 of the tub bottom of Nicollet for reception of the lower limps and the upwardly concave 3 for reception of the hips would still be there and the foot well would be an addition feature to the existing structure of Nicollet tub.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Huyen Le

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Primary Examiner
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